

Mr. Shipman
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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

[Request for Review of GSA Deduction Action]

FILE: B-197658

DATE: August 25, 1980

MATTER OF: Yellow Freight System, Inc.

DIGEST:

1. One lot of freight tendered at one time from one consignor at one place to one consignee at one place constitutes one shipment entitled to truckload rate although carrier transported freight on different days and issued multiple bills of lading.
2. Substance of transportation transaction and not incidental forms of billing govern character of transportation service. 52 Comp. Gen. 575 (1973)

Yellow Freight System, Inc. (Yellow), requests review by the Comptroller General, pursuant to 4 C.F.R. Part 53 (1979) of deduction action taken by the General Services Administration (GSA).

The record shows that 59 bundles of steel posts, weighing a total of 107,129 pounds, were tendered by Bock Industries, Inc., to Yellow and were transported by Yellow from Elkhart, Indiana, to Federal Prison Industries, Inc., Lompoc, California. Twenty-two bundles, weighing 40,253 pounds, were transported under carrier's bill of lading 4141, dated December 10, 1976. Another 22 bundles, of the same weight, were transported under carrier's bill of lading 4142, December 13, 1976. And 15 bundles, weighing 26,623 pounds, were transported under carrier's bill of lading 4148, dated December 15, 1976. The three bills of lading were annotated for conversion to a Government bill of lading (GBL) at destination and were so converted to the single GBL, K-3841434.

For this service Yellow originally billed and was paid by Federal Prison Industries, Inc., \$7,820.42. On audit of the payment voucher, GSA determined that the charges should be \$6,170.63. This was based on the class 37-1/2 truckload rate of \$5.76 per hundred pounds subject to a minimum weight of 36,000 pounds on the total weight

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of 107,129 pounds, as provided by item 106340 of the National Motor Freight Classification 100-C, ICC NMF 100-C, and U.S. Government Quotation ICC RMB Q19-C. GSA therefore notified Yellow that an overcharge of \$1,649.79 had been determined. In response Yellow refunded \$1,109.67, stating that the total weight of 107,129 pounds was not a single shipment as treated by GSA but moved under three freight bills, tendered by the shipper on three separate commercial bills of lading, which were not cross-referenced to constitute one shipment. Yellow, therefore, computed the charges at the class 37-1/2 truckload rate on 80,506 pounds, the weight transported in the first and second trailers, as \$4,637.15, plus the same rate on the third trailer with 15 bundles, at the minimum weight of 36,000 pounds, as \$2,073.60, for a total of \$6,710.75.

Bock Industries, by indorsement to GSA's inquiry of February 5, 1979, stated that the entire weight of 107,129 pounds was offered to the carrier for carriage at one time and that the carrier made arrangements for pickup as three separate shipments. GSA, therefore, notified Yellow that its remittance was applied as a partial payment and requested payment of the balance of \$540.12. On the failure of Yellow to make further refund the balance was recovered by setoff.

In its request for review Yellow states that investigation by Yellow indicated that Bock tendered the three shipments on three separate days and on three separate bills of lading. Yellow contends, therefore, that the freight was tendered as three separate shipments and cannot later be combined as one shipment to make lower charges. However, Yellow fails to substantiate this contention, nor does it respond to the contrary evidence presented by Bock.

Item 110, section 5, of the classification provides: "Unless otherwise provided in carriers' tariffs, a shipment consists of a lot of freight tendered to a carrier by one consignor at one place at one time for delivery to one consignee at one place on one bill of lading." The evidence shows that the present transportation consisted of freight tendered by one consignor at one place to one consignee at one place and satisfies the definition of a single shipment unless the preparation of three bills of lading necessitates treatment of the movement as three shipments.

Although the record indicates that the freight was picked up on different days, the shipper, Bock Industries, states that the carrier was offered the entire lot at one time. In Willingham v. Seligman, 179 F.2d 257 (5th Cir. 1950), the court held that the offer of a lot of freight constituted one

shipment notwithstanding the inability of the carrier to transport the entire lot at one time or on one day. Neither does the fact that the lot of freight moved on three bills of lading prevent the movement from being a single shipment. The Interstate Commerce Commission (ICC) has held that the nature of the shipment is not determined by the incidental billing but by the substance of the transaction. Thus, where the shipper tendered a lot of freight at one time for transportation but the carrier issued multiple bills of lading the ICC found that the carrier breached its duty to issue appropriate billing and further found the transportation to constitute a single shipment. Hutchinson Moore Lumber Co. v. Gulf, M. & N. R., 210 ICC 523 (1935); Exposition Cotton Mills v. Southern Ry., 234 ICC 441 (1939); and Southgate Brokerage Co., Inc. v. Lehigh Valley R.R., 274 ICC 245 (1949); see 52 Comp. Gen. 211 (1972).

Therefore, the record before our Office shows that a truckload lot of freight was tendered by the shipper for transportation from one consignor at one place to one consignee at one place on one day, and that the carrier issued multiple bills of lading in breach of its duty to issue appropriate billing. Further, the mere technical requirement of a single bill of lading does not defeat the substance of a single shipment under item 110, section 5 of the classification. 52 Comp. Gen. 575 (1973).

Accordingly, on the basis of the present record, the action of GSA was appropriate and is sustained.

Harry K. Van Cise

For The Comptroller General
of the United States